

FILED
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RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND
ADR

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10
11 **UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JCS

C13-3276

11 A.C., a minor, by and through his Guardian
12 Ad Litem, MARK CALHOUN,

13 Plaintiff,

14 v.

15 CITY OF SANTA CLARA, a municipal
16 corporation; MICHAEL SELLERS, Chief of
17 Police for the CITY OF SANTA CLARA, in
18 his official capacity and DOES 1-50,
19 inclusive,

20 Defendants.
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Case No.:

COMPLAINT FOR DAMAGES

(42 U.S.C §§ 1983, 1988; and pendent
tort claims)

JURY TRIAL DEMANDED

1
2 **INTRODUCTION**

3 1. This cause of action arose after unknown Police Officers employed by
4 the CITY OF SANTA CLARA Police Department used unwarranted and
5 excessive force against Plaintiff A.C.—an at-risk 16-year-old child—by shooting
6 him in the head with a rubber bullet and subsequently ordering a K9 officer to
7 attack him while he was unconscious. As a result, of the actions of these
8 unnamed CITY OF SANTA CLARA Police Officers', Plaintiff A.C. sustained a
9 an injury to his head that required emergency brain surgery and now suffers from
10 permanent brain injury.

11 **JURISDICTION**

12 2. This action arises under Title 42 of the United States Code, Section
13 1983. Title 28 of the United States Code, Sections 1331 and 1343 confers
14 jurisdiction upon this Court. The unlawful acts and practices alleged herein
15 occurred in the City of Santa Clara, Santa Clara County, which is within this
16 judicial district.

17 **PARTIES**

18 3. Minor Plaintiff A.C., at all times herein mentioned is a United States
19 citizen. His Guardian Ad Litem, MARK CALHOUN, a competent adult and
20 United States Citizen, is representing him in this action.

21 4. Defendant CITY OF SANTA CLARA (hereinafter "CITY") is, at all
22 times herein mentioned, a municipal entity duly organized and existing under the
23 laws of the State of California. Under its supervision, the CITY operates the
24 Santa Clara Police Department.

25 5. Defendant MICHAEL SELLERS (hereinafter "CHIEF") is, at all times
26 herein mentioned, a natural person and the Chief of Police for the CITY OF
27 SANTA CLARA.

1
2 6. Plaintiff is ignorant of the true names and/or capacities of Defendants
3 sued herein as DOES 1 through 50, inclusive, and therefore sue said defendants
4 by such fictitious names. Plaintiff will amend this complaint to allege their
5 true names and capacities when ascertained. Plaintiff believes and alleges that
6 each of the DOE defendants is legally responsible and liable for the incident,
7 injuries and damages hereinafter set forth. Each defendant proximately caused
8 injuries and damages because of their intentional conduct, negligence, breach of
9 duty, negligent supervision, management or control, violation of public policy,
10 false arrests and/or unlawful use of force. Each DOE defendant is liable for
11 his/her personal conduct, vicarious or imputed negligence, fault, or breach of
12 duty, whether severally or jointly, or whether based upon agency, employment,
13 ownership, entrustment, custody, care or control or upon any other act or
discovery.

14 7. In doing the acts alleged herein, Defendants, and each of them acted
15 within the course and scope of their employment.

16 8. In doing the acts and/or omissions alleged herein, Defendants, and
17 each of them, acted under color of authority and/or under color of law.

18 9. Due to the acts and/or omissions alleged herein, Defendants, and each
19 of them, acted as the agent, servant, and employee and/or in concert with each of
20 said other Defendants herein.

21 10. For State causes of action related to Federal claims, Plaintiff is
22 required to comply with an administrative claim requirement under California
23 law. Plaintiff has complied with all applicable requirements.

24 25 **FACTS**

26 11. In the early morning hours of July 8, 2012, Plaintiff A.C. arrived at the fire
27 station on Homestead Road and Kielly Blvd, in Santa Clara, California.
28

1 12. On the evening of July 7, 2012, Plaintiff A.C., then age 16, attended a party at
2 840 Las Palmas Drive in Santa Clara, California. Unknown Defendant CITY OF SANTA
3 CLARA Police Officers were dispatched to the party. The Unknown Defendant CITY OF
4 SANTA CLARA Police Officers arrived at the party and saw minors consuming alcohol.
5 The Unknown Defendant CITY OF SANTA CLARA Police Officers left the intoxicated
6 minors at the party.
7

8 13. The Unknown Defendant CITY OF SANTA CLARA Police Officers returned
9 to the party two more times and on the third trip they told the minors that if they did not
10 intend to spend the night that they must leave the party.
11

12 14. Plaintiff A.C. left the party at the command of the Unknown Defendant
13 CITY OF SANTA CLARA Police Officers. Plaintiff A.C. wandered around Santa Clara
14 intoxicated, lost, frightened and confused. Plaintiff A.C. cut his hand during his
15 confusion.
16

17 15. Sometime during the early morning hours of July 8, 2012, Plaintiff A.C.
18 arrived at a fire station at Homestead Road and Kielly Blvd. looking for help for his
19 injuries. There was no answer at the fire station door. Plaintiff A.C. was scared and
20 called 911 and told the dispatcher that someone was trying to kill themselves.
21

22 16. Unknown Defendant CITY OF SANTA CLARA Police Officers arrived on
23 the scene. Plaintiff A.C. was confused and frightened and put a 2 ½ inch pocket knife to
24 his throat when confronted by the police. Plaintiff A.C. kept the knife to his throat and
25 told the Unknown Defendant CITY OF SANTA CLARA Police Officer's that he was
26 going to get into a lot of trouble.
27
28

1 17. At this point there were approximately fourteen (14) armed Unknown
2 Defendant CITY OF SANTA CLARA Police Officers and a K9 on the scene. Some of
3 the Unknown CITY OF SANTA CLARA Police Officers were using riot shields and
4 others were hiding behind their car doors, despite the fact that the teenage Plaintiff was
5 obviously in need of help.
6

7 18. The Unknown Defendant CITY OF SANTA CLARA Police Officers shot
8 Plaintiff A.C. with a rubber bullet round from a shotgun. Plaintiff A.C. was still
9 approximately 21 feet away from the Unknown Defendant CITY OF SANTA CLARA
10 Police Officers when they opened fire on him. Plaintiff A.C. doubled over in pain when the
11 rubber bullet round hit him in his thigh.
12

13 19. The Unknown Defendant CITY OF SANTA CLARA Police Officers fired a
14 second rubber bullet round at Plaintiff A.C. Plaintiff A.C. was hit in the left side of his
15 skull with a rubber bullet which rendered him unconscious and severely injured. The
16 Unknown Defendant CITY OF SANTA CLARA Police Officers then released the K9 on
17 the unconscious Plaintiff A.C. The K9 bit and scratched the unconscious Plaintiff A.C. on
18 his back and shoulders.
19

20 20. While he was still unconscious, Plaintiff A.C. was transported to Santa Clara
21 Valley Medical Center. Plaintiff A.C. required immediate, emergency brain surgery to
22 relieve the bleeding and pressure on his brain caused by a skull fracture. Plaintiff A.C.
23 remained unconscious and on a ventilator for 5 days before regaining consciousness. In
24 order to relieve the pressure on his brain, a portion of Plaintiff A.C.'s skull was left open.
25 The extent and future impact of Plaintiff's permanent brain injury is yet unknown.
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22. As a consequence of Defendants' violation of Plaintiff's federal civil rights under 42 U.S.C. §1983 and the Fourteenth Amendment, Plaintiff A.C. was physically, mentally, emotionally and financially injured and damaged as a proximate result of Defendant's actions.

21 23. The conduct of the Unknown Defendant Officers was malicious, wanton and
22 oppressive. Plaintiff is therefore entitled to an award of punitive damages against these
Defendants.

6

FIRST CAUSE OF ACTION

(Violation of Plaintiff's civil rights - 42 U.S.C. § 1983)

(Plaintiff Against Defendant DOES 1 - 25)

25. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 24 of this complaint.

26. The foregoing claim for relief arose when Defendant Officers shot Plaintiff with rubber bullets and ordered a K9 to attack him while he was unconscious despite the fact that Plaintiff posed no risk to Officers.

27. Defendants acted under color of law by unreasonably using excessive force, subjecting Plaintiff to infringement of certain constitutionally protected rights as are substantively guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

(Monell – 42 U.S.C. section 1983)

(Plaintiff Against CITY, CHIEF and DOES 26-50)

28. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through 27 of this Complaint.

29. Plaintiffs are informed and believe and thereon allege that high-ranking CITY OF SANTA CLARA officials, including high-ranking police supervisors such as Defendant Chief of Police MICHAEL SELLERS, DOES 26 through 50, and/or each of them, knew and/or reasonably should have known about repeated acts of misconduct by DOES 1-25, and/or each of them.

30. Despite having such notice, Plaintiff is informed and believes and thereon alleges that Defendants Chief of Police MICHAEL SELLERS, DOES 26-50, and/or each of them, approved, ratified, condoned, encouraged, sought to cover up, and/or tacitly authorized the continuing pattern and practice of misconduct and/or civil rights violations by said police officers.

WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

(Plaintiff Against Defendants DOES 1-25)

8

1 and safety.

2 36. Defendants breached their duty to ensure the safety of the intoxicated minors,
3 including Plaintiff, when they ordered the minors to disburse in the middle of the night.

4 37. As a direct result of Defendants' actions and orders, Plaintiff became lost and
5 disoriented, resulting in the encounter with Defendant Officers, during which Plaintiff
6 suffered a severe brain injury.

7 38. Plaintiff's injuries required emergency brain surgery and resulted in permanent
8 injuries.

9 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

10 **FOURTH CAUSE OF ACTION**

11 **(Intentional Infliction of Emotional Distress)**

12 (Plaintiff Against Defendant DOES 1-25)

13 39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 38 of
14 this Complaint.

15 40. Defendants' above-described conduct was extreme, unreasonable and
16 outrageous.

17 41. In engaging in the above-described conduct, defendants intentionally ignored or
18 recklessly disregarded the foreseeable risk that Plaintiff would suffer extreme emotional
19 distress as a result.

20 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

21 **FIFTH CAUSE OF ACTION**

22 **(Assault and Battery)**

23 (Plaintiff Against Defendant DOES 1-25)

24 42. Plaintiff re-alleges and incorporate by reference paragraphs 1-41 of this
25 Complaint.

26 43. Defendants maliciously, intentionally and unnecessarily shot Plaintiff with
27 rubber bullets and ordered the K9 to attack him while he was unconscious which caused
28 Plaintiff to suffer a traumatic brain injury requiring emergency brain surgery, and to suffer

1 cuts and lacerations to his back and shoulders.

2 44. Defendants' above described conduct constituted assault and battery.

3 WHEREFORE, Plaintiff prays for relief as hereinafter set forth

4
5 **JURY DEMAND**

6 45. Plaintiff hereby demands a jury trial in this action.

7 **PRAYER**

8 WHEREFORE, Plaintiff prays for relief, as follows:

9 1. For general damages in a sum to be determined according to proof;

10 2. For special damages, including but not limited to, past, present and/or future
11 wage loss, income and support, medical expenses and other special damages in a sum to be
12 determined according to proof;

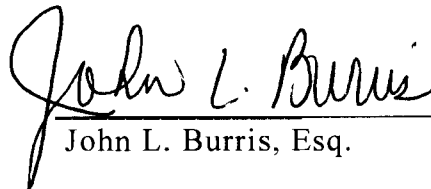
13 3. For punitive damages and exemplary damages in amounts to be determined
14 according to proof as to defendant DOES 1 through 50 and/or each of them;

15 4. For reasonable attorney's fees pursuant to 42 U.S.C. §1988;

16 5. For cost of suit herein incurred;

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19 **LAW OFFICES OF JOHN L. BURRIS**

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21 Dated: July 15, 2013

22 
John L. Burris, Esq.